THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 2211 of 2005

Dated: 21-12-2005

Between:

T.Venkataswamy

..... PETITIONER

AND

The APSRTC, rep., by its Regional

Manager, Mahabubnagar Region,Mahabubnagar

And two others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 2211 of 2005

O R D E R:

This writ petition is filed seeking a declaration that the action of the first respondent-A.P. State Road Transport Corporation in issuing the proceedings

dated 10-12-2004 whereunder the petitioner was called upon to furnish his consent for allotment of Shop.23 in Gadwal Bus Stand instead of Shop No.19 is arbitrary and illegal.

The petitioner states that in pursuance of the tender notification dated 08-01-2004 issued by the first
respondent-Corporation inviting tenders for allotment of the shops specified thereunder under Develop Operate and Transfer Scheme (D.O.T. Scheme), the petitioner has submitted his bid and having accepted the same, the first respondent-Corporation allotted shop No.19 to him by proceedings dated 05-04-2004 on a monthly licence fee of Rs.2,400/- in which the petitioner was also requested to deposit Rs.93,746/- towards balance of 90%
of non-refundable deposit. Accordingly the petitioner deposited the said amount on 20-05-2004. However, the possession of allotted shop was not handed over to him and therefore he got issued a legal notice dated
22-12-2004 calling upon the first respondent-Corporation to retain shop No.19 to the petitioner as per the order of allotment dated 05-04-2004. In pursuance of the same, the first respondent-Corporation issued a reply dated 22-01-2005 stating that the said shop was already allotted to the third respondent herein in the second phase of tenders pursuant to which an agreement dated 11-08-2003 was executed in favour of the third respondent, who deposited the required amount. Accordingly, the petitioner was advised to accept shop No.23 instead of Shop No.19. Subsequently, the first respondent-Corporation under the impugned letter dated
10-12-2004 called upon the petitioner to furnish his consent for allotment of shop No.23 instead of shop No.19 within seven days from the date of receipt of the said letter. Aggrieved by the said action of the first
respondent-Corporation, this writ petition is filed.

On behalf of the first respondent-Corporation a detailed counter affidavit has been filed in which it is stated that initially a tender notification was issued in the local dailies on 13-11-2001 inviting tenders for allotment of 8 shops in Gadwal Bus Stand under D.O.T. Scheme in the first phase. Accordingly, 8 shops were allotted to the successful bidders in first phase and after completing the construction, shops were handed over to the persons concerned. Subsequently, tender notification dated 19-03-2003 was issued

inviting tenders for allotment of 17 shops in the second phase. However, in the second phase only 10 shops were allotted and for the remaining 7 shops, another tender notification was issued on 09-01-2004 in the third phase. It is stated that in the second phase, shop No.19 was allotted to the third respondent herein, however by mistake shop No.19 was again included in the tender notice dated 09-01-2004 in the third phase and having accepted the bid of the petitioner, shop No.19 was allotted to him. It is also stated that inclusion of shop No.19 in the third phase is nothing but a mistake and since the said shop No.19 was already allotted to the third respondent herein and an agreement was also executed in his favour, the petitioner cannot be allotted the said shop. In the circumstances under the impugned letter he was requested to furnish his consent for allotment of shop No.23.

The third respondent also filed a counter-affidavit on the same lines stating that he has paid the amount as required by the first respondent-Corporation and an agreement was also executed in his favour as long back as on 11-08-2003, however, possession has not been handed over to him so far, in view of the pendency of the writ petition.

I have heard the learned counsel for both the parties.

From the material on record, it is clear that there was a mistake in including shop No.19 in the tender notice dated 09-01-2004 while inviting tenders for allotment of shops in the third phase. The counter-affidavits filed by the first respondent-Corporation as well as the third respondent clearly show that an agreement was also executed in favour of the third respondent on 11-08-2003 much before the publication of the tender notification dated 09-01-2004. The copy of the agreement was placed before this Court, which shows that the licence was granted in favour of the petitioner for a period of 20 years from 11-08-2003 up to the year 2023.

However, learned counsel for the petitioner vehemently contended that the version of the first

respondent-Corporation that the shop in question was allotted long back in favour of the third respondent is only an after thought to defeat the rights acquired by the petitioner, who is the successful bidder in the 3rd phase in respect of shop No.19.

In the absence of any material to substantiate the said plea of the petitioner, I do not find any justifiable reason to disbelieve the version of the respondents. At any rate, obviously the matter does not involve enforcement of any statutory right. As a matter of fact there was no concluded contract. Even assuming that the impugned action is in breach of terms under the allotment proceedings the petitioner cannot seek enforcement of the same by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

If the petitioner is still aggrieved, it is always open to him to work out the appropriate common law remedy for redressal of his grievance.

With the above observation, the writ petition is disposed of. However, it is made clear that this shall not preclude the petitioner to submit his consent as required under the impugned letter within a period of four weeks from today, in which event the same shall be considered by the first respondent-Corporation in accordance with law. No costs.

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G.ROHINI,J

21-12-2005

Note: C.C. in three days.

B/o

klp